

COPY

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Attorneys for Plaintiffs
SMITHFIELD FOODS INC., et. al.

2012 MAR 16 PM 3:18
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE
BY: _____

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

SMITHFIELD FOODS INC., a)
Virginia Corporation, PATRICK)
CUDAHY, INC., a Delaware)
Corporation, ALLIANZ GLOBAL)
RISKS US INSURANCE COMPANY,)
a California Corporation, ACE)
AMERICAN INSURANCE)
COMPANY, a Pennsylvania)
Corporation, GENERAL SECURITY)
INDEMNITY COMPANY OF)
ARIZONA, an Arizona Corporation,)
LIBERTY MUTUAL FIRE)
INSURANCE COMPANY, a)
Wisconsin Corporation, TOKIO)
MARINE & NICHIDO FIRE)
INSURANCE COMPANY, LTD., a)
New York Corporation, and)
CERTAIN UNDERWRITERS AT)
LLOYD'S OF LONDON AND ITS)
MEMBERS SUBSCRIBING TO)
CONTRACT NO. DP685509(1),)
UNIQUE MARKET REFERENCE)
B0509685509, a Foreign Corporation,)

CV

Case No.:

12 - 02254

CBM

COMPLAINT FOR MONEY
DAMAGES UNDER THE
FEDERAL TORT CLAIMS ACT

(DTBx)

1 as subrogees of SMITHFIELD)
2 FOODS, INC. and PATRICK)
3 CUDAHY, INC.,)

4 Plaintiffs,)

5 vs.)

6 UNITED STATES OF AMERICA,)

7)
8 Defendant.)
9

10 COMPLAINT

11 Jurisdiction, Venue and Conditions Precedent

12
13 1. This matter involves claims for money damages against the United
14 States of America under the Federal Tort Claims Act, 28 U.S.C. §§2671, et.
15 seq. Consequently, pursuant to 28 U.S.C. §1346(b)(1), this Court has subject
16 matter jurisdiction over this matter.
17

18 2. While the underlying loss occurred in Wisconsin, the acts or
19 omissions which Plaintiffs contend impose liability on Defendant (United States
20 of America) occurred at the Twentynine Palms United States Marine Corps
21 Base in San Bernardino County, California. Consequently, pursuant to 28
22 U.S.C. §1402(b), venue is proper in this jurisdiction.
23

24 3. Plaintiffs have fully complied with the provisions of the Federal
25 Tort Claims Act, primarily 28 U.S.C. §2675. Plaintiffs timely served notice of
26
27
28

1 their claim on the United States Department of Navy, and that claim was denied
2 on November 16, 2011 (see Exhibit A).

3
4 4. This matter was originally filed in the U.S. District Court for the
5 Eastern District of Wisconsin (Case No. 2:11-CV-1148). However, because (in
6 a Motion to Dismiss) the United States of America agreed with Plaintiffs that
7 the underlying acts or omissions occurred in San Bernardino County,
8 California, and therefore California law applies, in the interests of the efficient
9 administration of justice that Wisconsin action was voluntarily dismissed
10 without prejudice.
11
12

13 The Parties

14 5. Plaintiff, SMITHFIELD FOODS INC. ("Smithfield"), is a Virginia
15 Corporation with its principal place of business in Virginia. Smithfield is duly
16 authorized to conduct and transact business in the State of Wisconsin.
17

18 6. Plaintiff, PATRICK CUDAHY INCORPORATED ("Patrick
19 Cudahy"), is a Delaware Corporation with its principal place of business
20 located at One Sweet Apple-Wood Lane, Cudahy, Wisconsin 53110. Patrick
21 Cudahy is a subsidiary of Smithfield, and is duly authorized to conduct and
22 transact business in the State of Wisconsin. At all times described herein,
23 Patrick Cudahy operated a 1,500,000 square foot pork processing facility (the
24 "Cudahy Processing Facility") at its Cudahy, Wisconsin location.
25
26
27
28

1 7. Plaintiff ALLIANZ GLOBAL RISKS US INSURANCE
2 COMPANY ("Allianz") is a California Corporation, with its principal place of
3 business in California. Allianz is duly authorized to conduct and transact
4 business in the State of Wisconsin as an insurance company. At all times
5 described herein, Allianz provided property insurance to Smithfield pursuant to
6 policy number P01058568 for various properties owned by Smithfield and its
7 subsidiaries, including the Cudahy Processing Facility. Allianz is a Plaintiff in
8 its own right, and as an assignee of ACE Bermuda Insurance Ltd. and Arch
9 Insurance (Bermuda).
10
11
12

13 8. Plaintiff ACE AMERICAN INSURANCE COMPANY ("ACE
14 American") is a Pennsylvania Corporation, with its principal place of business
15 in Pennsylvania. ACE American is duly authorized to conduct and transact
16 business in the State of Wisconsin as an insurance company. At all times
17 described herein, ACE American provided property insurance to Smithfield
18 pursuant to policy number JY09J0252923 for various properties owned by
19 Smithfield and its subsidiaries, including the Cudahy Processing Facility.
20
21
22

23 9. Plaintiff, GENERAL SECURITY INDEMNITY COMPANY OF
24 ARIZONA ("GSINDA"), is an Arizona Corporation, with its principal place of
25 business in New York. GSINDA is duly authorized to conduct and transact
26 business in the State of Wisconsin as an insurance company. At all times
27 described herein, GSINDA provided property insurance to Smithfield pursuant
28

1 to policy number 280732 for various properties owned by Smithfield and its
2 subsidiaries, including the Cudahy Processing Facility.

3
4 10. Plaintiff, LIBERTY MUTUAL FIRE INSURANCE COMPANY
5 (“Liberty Mutual”), is a Wisconsin Corporation with its main administrative
6 office located at 175 Berkeley Street, Boston, Massachusetts. Liberty Mutual
7 is duly authorized to conduct and transact business in the State of Wisconsin as
8 an insurance company. At all times described herein, Liberty Mutual provided
9 property insurance to Smithfield pursuant to policy numbers X 58A-001605-00
10 and 430565600 for various properties owned by Smithfield and its subsidiaries,
11 including the Cudahy Processing Facility.
12

13
14 11. Plaintiff, TOKIO MARINE AND NICHIDO FIRE INSURANCE
15 CO., LTD. (“Tokio Marine”), is a New York Corporation, with its principal
16 place of business in New York. Tokio Marine is duly authorized to conduct and
17 transact business in the State of Wisconsin as an insurance company. At all
18 times described herein, Tokio Marine provided property insurance to Smithfield
19 pursuant to policy number PRT000044171 for various properties owned by
20 Smithfield and its subsidiaries, including the Cudahy Processing Facility.
21
22

23
24 12. Plaintiffs, CERTAIN UNDERWRITERS AT LLOYD’S OF
25 LONDON AND ITS MEMBERS SUBSCRIBING TO CONTRACT NO.
26 DP685509(1), UNIQUE MARKET REFERENCE B0509685509 (“Lloyd’s”),
27 are foreign organizations and underwriters of insurance policies. Lloyd’s is
28

1 comprised of a group of syndicates acting by and through their appointed active
2 underwriters and with a principal place of business at 1 Lime Street, London,
3 England. At all times described herein, Lloyd's provided property insurance to
4 Smithfield for various properties owned by Smithfield and its subsidiaries,
5 including the Cudahy Processing Facility. The Plaintiffs in Paragraphs 7-12 are
6 collectively hereinafter known as "Plaintiff Insurers."
7
8

9 13. Upon information and belief, the Department of the Navy ("the
10 Navy") is a department of the executive branch of the federal government of the
11 United States of America. The United States Marine Corps (USMC") falls
12 under the umbrella of the Navy.
13

14 14. While Plaintiffs' tort claims are technically against the Navy,
15 pursuant to 28 U.S.C. §2679(a) the proper Defendant in this matter is the
16 United States of America.
17

18 **Factual Allegations**

19 15. In 2007, Joshua Popp ("Mr. Popp"), was a reservist in the USMC,
20 and was living at or near the Twentynine Palms USMC Base.
21

22 16. Sometime in 2007, Mr. Popp was stationed at Camp Wilson (at the
23 Twentynine Palms Base) for field training. Camp Wilson is the final training
24 and staging area for USMC units going to active combat zones.
25

26 17. While stationed at Camp Wilson, but outside of the field training
27 grounds (where live munitions were allowed), and outside of any area where
28

1 live munitions were securely stored (such as an armory), Mr. Popp found a live,
2 M125 green star cluster flare (the "Flare").
3

4 18. Pursuant to Department of Defense ("DOD") Regulation
5 5100.76M ("Physical Security of Sensitive Conventional Arms, Ammunition
6 and Explosives"), "illumination" ordnances liked the Flare are considered
7 Category III controlled munitions.
8

9 19. Furthermore, pursuant to Twentynine Palms Combat Center Order
10 ("CCO") P3500.4F, flares such as the M125 green star cluster flare are Class V
11 munitions. CCO P3500.4F adds that such munitions are "designed to inflict
12 casualties and destroy property and material. . .[they make] no distinction
13 between friend or foe."
14

15 20. Mr. Popp took the Flare off base, away from Camp Wilson, and
16 transported it to Cudahy, Wisconsin, where his parents reside.
17

18 21. In July 2009, Mr. Popp traveled to Cudahy, Wisconsin to celebrate
19 the Fourth of July Holiday with this parents and brother, Kurtis Popp.
20

21 22. At approximately 9:23 p.m. on Sunday, July 5, 2009, Joshua and
22 Kurtis Popp launched the Flare outside their parents' home, located at 3656 E.
23 Holmes Avenue, Cudahy, Wisconsin 53110.
24

25 23. The Flare traveled into the air and landed on the roof of the
26 Cudahy Processing Facility.
27
28

1 24. Upon landing on the roof of the Cudahy Processing Facility, the
2 Flare exploded resulting in a massive fire.

3
4 25. Due to the fire and resulting damage, Smithfield submitted
5 insurance claims with the Plaintiff Insurers for property damage and business
6 interruption losses related to the fire. Pursuant to their respective policies, the
7 Plaintiff Insurers paid Smithfield \$208,000,000.00. As a result of said
8 payments, Plaintiff Insurers are legally, equitably and contractually subrogated
9 to Smithfield's rights against the United States, and any other parties who may
10 bear responsibility for the fire to the extent of the payments made by Plaintiff
11 Insurers.

12
13
14 26. Further, Smithfield suffered uninsured losses in the amount of
15 \$118,000,000.00, bringing the total claim to \$326,000,000.00.

16
17 **COUNT ONE - NEGLIGENCE**

18 27. Plaintiffs incorporate by reference Paragraphs 1-26 as if they were
19 set forth herein.

20
21 28. Pursuant to Cal. Civ. Code §1714, as well as California common
22 law [for example, *see Parrott v United States* (S.D. Cal. 1960) 181 F. Supp.
23 425, and *Warner v Santa Catalina Island Company* (1955) 44 Cal.2d 310, 282
24 P.2d 12] , the Navy owed a duty to the public at large (including Smithfield) to
25 keep munitions and/or ordnance at the Twentynine Palms Base properly
26 tracked, secured and stored, and to prevent any munitions/ordnance from
27
28

1 finding its way into an uncontrolled and unsecured area, or into unauthorized
2 hands.

3
4 29. As expressed in various regulations, the Navy was well aware of
5 this aforementioned duty:

6 A. Twentynine Palms Combat Center Order ("CCO") P3500.4F
7 provides that the Officer in Charge ("OIC") of the training range is
8 responsible for the control, handling, and accountability of all
9 ammunition and explosives used in training exercises. The OIC shall
10 ensure that all unexpended Class V munitions (which includes the Flare)
11 are inventoried, verified and received for appropriate storage.

12 B. CCO P3500.4F provides that safety is of the utmost
13 importance in the use and handling of ammunition and explosives (which
14 includes the Flare) and is the responsibility of each individual concerned.
15 The primary responsibility is to prevent any conditions which may cause
16 injury or death. All personnel involved in the use of ammunition and
17 explosives will be thoroughly indoctrinated in safety precautions,
18 procedures, and principles.

19 C. CCO P3500.4F lists three major principles of safety relative
20 to the use of ammunition and explosives (which includes the Flare) that
21 will prevent accidents caused by the human element: (1) proper
22 supervision by qualified personnel; (2) proper training and instruction of
23 individuals, crews, or other personnel who handle, transport, use or fire
24 ammunition or explosives; and (3) proper and effective security.

25 D. CCO P3500.4F requires all unit commanders to establish
26 procedures which ensure recovery of all ordnance and salvageable
27 ammunition components prior to departing from the firing site.

28 E. CCO P3500.4F provides that ammunition shall not be
removed from any military activity, nor shall it ever be abandoned,
destroyed, fired indiscriminately, or otherwise disposed of in order to
circumvent the inconvenience of returning it to a storage site.

F. Finally, CCO P3500.4F provides that ammunition shall be
expended for intended training purposes, only, and that burying or hiding

1 Class V munitions for future use or other purposes is expressly
2 prohibited.

3 30. In order to fulfill the aforementioned duty, the Navy instituted a
4 serious of mandatory (non-discretionary) procedures to be followed at the
5 Twentynine Palms Base. These were designed to make sure that
6
7 munitions/ordnance were accounted for and tracked as they left the armory (or
8 other secured weapons storage facility), were distributed to Marines for use in
9 training exercises in the field training grounds, and when any unused munitions
10 were returned after training exercises were completed. These procedures
11 included the following:
12

13
14 A. Twentynine Palms Combat Center Order ("CCO") 8000.4D
15 provides that all munitions (which includes the Flare) used for field
16 training "require either a staff noncommissioned officer (SNCO) or
17 officer to sign for the munitions." The SNCO or officer who signs for
18 the munitions must remain with those munitions until it is either: (1)
19 expended or (2) they are turned back into the armory.

20 B. CCO 8000.4D provides that any personnel withdrawing munitions
21 must check in with the records department before actually withdrawing
22 any munitions.

23 C. CCO 8000.4D further states that munitions may be transported
24 throughout the Base in vehicles that have been a completed vehicle
25 inspection form and are driven by a driver certified to transport
26 munitions, only.

27 D. CCO 8000.4D provides that any munitions required for use prior to
28 normal working hours, or on weekends may, with approval of the OIC,
be loaded the previous day and staged at the armory. Under no
circumstances will munitions be transported into, or staged in, the main
camp area of Camp Wilson. Importantly, munitions to be pre-staged
must be secured to "prevent pilferage." Vehicles holding pre-staged

munitions will be chocked and a fire extinguisher must be placed in front of the vehicle to prevent unauthorized transport of the munitions.

E. Similarly, CCO 8000.4D provides that any munitions returned when the armory is closed must be pre-staged and secured to "prevent pilferage." Again, the vehicle containing the pre-staged munitions must have the wheels chocked and a fire extinguisher must be placed in front of the vehicle to prevent unauthorized transport of the munitions.

F. CCO 8000.4D also provides that units utilizing Class V munitions must submit expenditure reports within 48 hours of completion of the exercise. Each report will include the quantity of munitions received, the quantity expended, and the quantity returned.

G. Upon information and belief, at Twentynine Palms Base CCO 8000.4D was carried out as follows. Munitions/ordnance used for a training exercise were taken from a secured storage area (armory, munitions depot, etc.) and placed in a mobile artillery outpost (a Humvee). This outpost was manned by two artillery officers who distributed the munitions/ordnance as needed for the training exercise in question. The Gunnery Sergeant was responsible for checking out munitions/ordnance from the outpost and distributing them to the Marines involved in the training exercise. At the end of the exercise all unused munitions/ordnance were to be returned to the mobile artillery outpost.

H. Upon information and belief, in order to ensure that no unused munitions or ordnance left the training area at the conclusion of an exercise, all involved Marines were patted down before leaving the training area.

I. Furthermore, pursuant to CCO P3500.4F, if (after the return of all unused munitions/ordnance) any Class V items (such as the Flare) should go missing, or are unaccounted for, a Missing, Lost, Stolen, or Recovered Report must be completed. On information and belief, this is followed by an investigation into the whereabouts of the missing/unaccounted for munitions/ordnance.

31. With respect to the Flare at Twentynine Palms Base, the Navy violated the aforementioned mandatory policies and procedures, thereby

1 breaching the duty of care referred to in ¶28 above. It ultimately failed to
2 account for unused munitions/ordnance after the conclusion of a training
3 exercise, permitting the Flare to find its way to an unsecured (as far as
4 munitions/ordnance are concerned) area of the Base, where Mr. Popp found the
5 Flare and took it.

7
8 32. The Navy's aforementioned breach of duty was a proximate cause
9 of the July 5, 2009 fire (and the damages set forth above). Had the Navy
10 fulfilled its duty of care, Mr. Popp would not have come into possession of the
11 Flare. Without the Flare, the fire would not have occurred.

13 33. Not only was the Navy's breach of duty a proximate cause of the
14 July 5, 2009 fire, for the following reasons (among others) Mr. Popp taking the
15 Flare off Twentynine Palms Base, his subsequent improper use of the Flare, and
16 the resulting fire were foreseeable events:

18 A. In CCO P3500.4F, the Navy recognized that the Flare, like
19 any other Class V ordnance, is "designed to inflict casualties and destroy
20 property and material. . .[and makes] no distinction between friend or
21 foe."

22 B. Being concerned with the unauthorized use of
23 munitions/ordnance by Marines and others, CCO P3500.4F made it clear
24 that ammunition or explosives will not be appropriated for personal use.

25 C. The Navy had experienced prior instances where Marines or
26 other personnel had taken munitions/ordnance off a military base for
27 personal use or gain. By way of example only, in August of 2006 a
28 Marine sold six feet of sheet explosive, two 40mm flare grenades, two
tear gas grenades, nine feet of detonation cord, and twenty-three non-
electronic blasting caps he had removed from the Precision Weapons

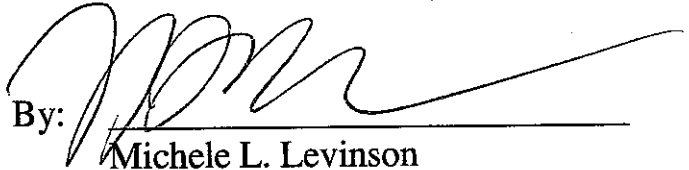
1 Section of the Quantico, Virginia Marine Base. He was court martialed
2 and sentenced to 57 months confinement.

3 WHEREFORE, Plaintiffs are entitled to damages from the United States,
4 and they do hereby pray that judgment be entered in their favor and against the
5 United States as follows:
6

- 7 • Damages in the amount of \$326,000,000.00;
- 8 • An award of attorneys fees and costs;
- 9 • Any and all interest which may or has accrued; and
- 10 • Such other and further relief as the Court deems just and equitable.
- 11

12 Respectfully submitted,

13 **DENENBERG TUFFLEY, PLLC**

14
15 By: 

16 Michele L. Levinson
17 (SBN: 234157)
18 mlevinson@dt-law.com
19 1999 Ave. of the Stars, Suite 1100
20 Los Angeles, CA 90067
21 (310) 356-4683

22 -and-

23 By: Todd B. Denenberg
24 (PHV Application to be filed)
25 tdenenberg@dt-law.com
26 Alyssa J. Endelman
27 (PHV Application to be filed)
28 aendelman@dt-law.com
Paul A. Casetta
(PHV Application to be filed)
pcasetta@dt-law.com

28411 Northwestern Hwy.,
Suite 600
Southfield, MI 48034
Telephone: (248) 549-3900

Attorneys for Plaintiffs

DATED: March 15, 2012

Exhibit A



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
TORT CLAIMS UNIT NORFOLK
9620 MARYLAND AVENUE SUITE 205
NORFOLK VA 23611-2949

IN REPLY REFER TO

5890

Ser J111337

November 16, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

TODD B DENENBERG ESQ
DENENBERG TUFFEY PLLC
28411 NORTHWESTERN HWY SUITE 600
SOUTHFIELD MI 48034

Dear Mr. Denenberg:

SUBJECT: CLAIM OF SMITHFIELD FOODS COMPANY, ET AL; OUR FILE
NO. J111337

This responds to your administrative claim in the amount of \$325,492,735.25 for damages allegedly resulting from a fire that occurred at Patrick Cudahy Inc.'s processing facility in Cudahy, Wisconsin, on July 5, 2009. The claim of Smithfield Foods Company and its subrogating carriers was analyzed under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b), 2401 (b), and 2671-2680. Our investigation has determined that the United States is not liable under the FTCA for the damages claimed.

Under the FTCA, the United States has waived its sovereign immunity only for damages caused by the negligent acts of an employee of the Government while that employee is acting within the scope of his office or employment. The Navy has now completed its investigation into the circumstances surrounding this incident. The damages claimed were not caused by any negligent act or omission on the part of an employee of the United States acting within the scope of his employment. Accordingly, your client's claim is denied.

If your client disagrees with this decision, be advised that Smithfield Foods Company has six months from the date of mailing of this letter to file suit in the appropriate federal district

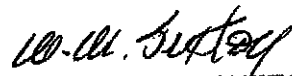
5890

Ser J111337

November 16, 2011

court. If you have any questions, please contact me at (757)
341-4561.

Sincerely,



WILLIAM M. SEXTON
Tort Claims Attorney

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

CV12- 2254 CBM (DTBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT

for the

Central District of California

SMITHFIELD FOODS INC, a Virginia Corporation,

(See Attached)

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

Civil Action No.

CV 12 - 02254

CBM

(DTBx)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michele L. Levinson
(SBN: 234157)
mlevinson@dt-law.com
1999 Ave. of the Stars, Suite 1100
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

TERRY NAFISI

CLERK OF COURT

MAR 16 2012

Date:

L. MURRAY

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Central District of California

SMITHFIELD FOODS, INC., a Virginia Corporation,

(see attached)
Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

CV 12 - 02254
Civil Action No.

CBM

(DTBx)

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To: (Defendant's name and address)

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Michele L. Levinson
(SBN: 234157)
mlevinson@dt-law.com
1999 Ave. of the Stars, Suite 1100
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MAR 16 2012

Date: _____

TERRY NAFISI
CLERK OF COURT

[Signature]

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Central District of California

SMITHFIELD FOODS, INC. a Virginia Corporation,
et al

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Civil Process Clerk
United States Attorney's Office
Central District of California
312 North Spring Street
Suite 1200
Los Angeles, California 90012

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michele L. Levinson
(SBN: 234157)
mlevinson@dt-law.com
1999 Ave. of the Stars, Suite 1100
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____

☐ I personally served the summons on the individual at *(place)* _____

on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
for the
Central District of California

SMITHFIELD FOODS, INC., a Virginia Corporation,

(See Attached)

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

Civil Action No.

CV 12 - 02254 CBM

(DTBx)

SUMMONS IN A CIVIL ACTION

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Michele L. Levinson
(SBN: 234157)
mlevinson@dt-law.com
1999 Ave. of the Stars, Suite 1100
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

TERRY NAFISI

CLERK OF COURT

MAR 16 2012

Date:

L. MURRAY

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Central District of California

SMITHFIELD FOODS INC., a Virginia Corporation,

(see attached)
Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

CV

12 - 02254

Civil Action No.

CBM

(DTBx)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michele L. Levinson
(SBN: 234157)
mlevinson@dt-law.com
1999 Ave. of the Stars, Suite 1100
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MAR 16 2012

Date: _____

TERRY NAFISI
CLERK OF COURT

[Signature]

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Central District of California

SMITHFIELD FOODS, INC. a Virginia Corporation,
et al

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington D.C. 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michele L. Levinson
(SBN: 234157)
mlevinson@dt-law.com
1999 Ave. of the Stars, Suite 1100
Los Angeles, CA 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
SMITHFIELD FOODS, INC., ALLIANZ GLOBAL RISKS US INSURANCE
COMPANY, AMERICAN INSURANCE COMPANY, GENERAL SECURITY
INDEMNITY COMPANY OF ARIZONA, ET. AL.

DEFENDANTS
UNITED STATES OF AMERICA

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michole L. Lovinson (234157) - DENENBERG TUFFLEY, PLLC
1999 Avenue of the Stars, Suite 1100, Los Angeles, CA 90067
(310) 356-4683

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under R.R.C.P. 23: ☐ Yes ☒ No **\$ MONEY DEMANDED IN COMPLAINT:** \$ 326,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Negligence claim against the United States of America under the Federal Tort Claims Act, 28 U.S.C. 2671, et. seq.

VII. NATURE OF SUIT (Place an X in one box only.)

<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 General Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/KC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veterans's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 830 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 860 Copyrights
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (13951T)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchises	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(e))
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 220 Foreclosures	<input type="checkbox"/> 463 Habeas Corpus- Alien Detainees		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 SSID Title XVI
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 866 RSI (405(e))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 290 All Other Real Property				
<input type="checkbox"/> 930 Constitutionality of State Statutes					

CV 12 - 02254

CBM (DTBx)

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

MAR 16 2012

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
SEE ATTACHMENT	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date 3/16/12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

SMITHFIELD FOODS, INC., et. al. vs. UNITED STATES OF AMERICA

Attachment to Civil Action Cover Sheet

IX. VENUE (subpart a)

Smithfield Foods, Inc. - Virginia

Patrick Cudahy, Inc. - Delaware and Wisconsin

Allianz Global Risks US Insurance Company - Los Angeles County, California

Ace American Insurance Company - Pennsylvania

General Security Indemnity Company of Arizona - Arizona and New York

Liberty Mutual Fire Insurance Company - Massachusetts and Wisconsin

Tokio Marine & Nichido Fire insurance Company, Ltd. - New York

Certain Underwriters at Lloyd's of London - England